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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/685,449	10/11/2000	Jeff Chin	F0002-010002	5968
49845	7590	09/12/2006	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				COLBERT, ELLA
		ART UNIT		PAPER NUMBER
		3693		

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	09/685,449	CHIN ET AL.	
<b>Examiner</b>  Ella Colbert	Examiner	Art Unit	
	3693		
<b>--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</b>			
<b>THE REPLY FILED 23 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</b>			
<p>1. <input type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input type="checkbox"/> The period for reply expires _____ months from the mailing date of the final rejection.</p> <p>b) <input checked="" type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p>			
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<p><b>NOTICE OF APPEAL</b></p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p>			
<p><b>AMENDMENTS</b></p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).</p>			
<p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____.</p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: _____.</p> <p>Claim(s) objected to: _____.</p> <p>Claim(s) rejected: <u>1-11, 17, 29-33 and 35-46</u>.</p> <p>Claim(s) withdrawn from consideration: _____.</p>			
<p><b>AFFIDAVIT OR OTHER EVIDENCE</b></p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p>			
<p><b>REQUEST FOR RECONSIDERATION/OTHER</b></p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u></p> <p>12. <input type="checkbox"/> Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____</p> <p>13. <input type="checkbox"/> Other: _____.</p>			
 <b>ELLA COLBERT</b> <b>PRIMARY EXAMINER</b>			

Continuation of 11. does NOT place the application in condition for allowance because: Applicants' correspondence address change filed 8/15/06 has been entered. Applicants' argument no. 1: Applicants' argue: The Examiner has the burden to establish a *prima facie* case of obviousness and the Examiner must show that some objective teaching in the prior art or some knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references has been considered but is not persuasive. Response: The ultimate determination whether an invention would have been obvious under 35 USC 103 is a legal conclusion based on underlying findings of fact. In re Kotzab, 217 F.3d 1365, 1369, 55 USPQd 1313, 1316 (Fed. Cir. 2000). Whether an invention has produced unexpected results and whether a reference teaches away from a claimed invention are questions of fact. In re Mayne, 104 F.3d 1339, 1343, 41 USPQ2d 1451, 1455 (Fed. Cir. 1997) (unexpected results); Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995) (teaching away). Under the substantial evidence standard, we affirm the Board's factual determinations if they are based upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." In re Gartside, 203 F.3d at 1312, 53 USPQ at 1773 (quoting Consolidated Edison Co. v NLRB, 305 US 197, 217 (1938)). Further, the establishment of a *prima facie* case of obviousness assumes that every reference relies to some extent on the knowledge of persons skilled in the art to complement that which is disclosed therein. The skilled artisan is presumed to know something more about the art than only what is disclosed in the applied reference/references. In other words, the person having ordinary skill in the art has a level of knowledge apart from the content of the references. In re Bode, 550 F.2d 656, 660, 193 USPQ 12, 16 (CCPA 1977); In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962). A conclusion of obviousness is established "from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference." In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). Also see MPEP 2144 entitled "Sources of Rationale Supporting a Rejection Under 35 USC 103: RATIONALE MAY BE IN A REFERENCE, OR REASONED FROM COMMON KNOWLEDGE IN THE ART, SCIENTIFIC PRINCIPLES, ART-RECOGNIZED EQUIVALENTS, OR LEGAL PRECEDENT". Applicants' Argument no. 2: Applicants' argue: Regardless of whether "historical record of prices" and "variable price schedule" are interpreted as the same, Nahan does not disclose the "notifying of a user when an entry in the variable price schedule is reached" has been considered but is not persuasive. Response: According to the steps in the claims, notifying a user when an entry in the variable price schedule is reached would have been obvious and performed anyway and the results would have been the same. Figure 22 discusses displaying a variable price and a difference ratio in col. 13, lines 3-39 and lines 47-53 placing an order (an entry) in the Nahan reference. Applicants' argument no. 3: Applicants' argue: The cited sections of Fisher do not disclose that a user is notified when an entry in a variable price schedule is reached has been considered but is not persuasive. Response: Fisher in col. 7, lines 8-23 discusses notifying a customer (User) when a bid is placed, updated, and showing the bids. Bids can be variable in price such as an auction on e-Bay or Yahoo. Applicants' claim step reciting receiving a reminder command associated with a selection of an entry in the variable price schedule from the user, the reminder command ...;" is unclear because it cannot be determined where or who the reminder command is received from. Method step one recites "presenting, via a first network ..." but does not mention "the first network" again in the claim limitations. Do Applicants' mean "receiving a reminder command, via the first network, associated with a selection of an entry ... , ...;"? Applicants' argument no. 4: Applicants' argue: Applicants' respectfully object to taking Official notice since it would not have been obvious to include such a contingency and Applicants' traverse the assertion of Official notice and requests that the Examiner cite a reference that teaches the missing elements. If the Examiner cannot cite a reference that teaches the missing elements, Applicants' respectfully request that the Examiner provide an affidavit that describes how the missing elements are present in the prior art has been considered but is not persuasive and therefore, respectfully traversed. Response: First of all, when Official notice or obviousness is used, the motivation or official notice is not always found in any of the references used in the rejections. It is often derived from common sense (knowledge), skill in the art or as stated above in the response to Applicants' Argument no. 1. Further, the recitation "wherein acceptance of the reminder command in the receiving of a reminder command ..." is redundant and unclear. Applicants' are respectfully requested to see the Godin reference at col. 2, lines 54-63 for the motivation of claim 8 and this is interpreted as the in this column and these line numbers. Applicants' argument no. 5: Applicants' argue: The user does not know the schedule of the times and associated falling prices and these sections of Godin do not disclose a future purchase control button. Among the differences, claim 44 recites "wherein the communicating of the variable price schedule includes displaying a future price and a future purchase control button next to it has been considered but is not persuasive. Response: It is interpreted that Godin discloses products to be auctioned (presenting a plurality of price selections) and the Web browser returning to the Web site (a plurality of time-separated price choices) and in Godin col. 4, lines 23-29 -"a user can index through the number of screens to get information on products to be auctioned". It is obvious that the products would also include price information. Figure 8 in Godin on the screen recites "to view products on other days, just select the date". This is interpreted as showing the present product and price and a future product and a price when clicked. Conclusion: Claims 1-10 do not claim a "control button". Claim 9 recites "a single click". In claim 10, is the presenting of the item information from "a single click" or from a "control button" as in claim 11? The claims have outstanding issues which have been observed after a closer review. The application is not considered to be in condition for allowance and does not simplify matters for appeal.